

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>IN THE MATTER OF FEDERAL-</b>	§	
<b>STATE JOINT BOARD ON</b>	§	<b>CC DOCKET NO. 96-45, ET AL.</b>
<b>UNIVERSAL SERVICE, ET AL.</b>	§	

**REPLY COMMENTS OF THE STATE OF TEXAS**

**NOW COMES THE STATE OF TEXAS (State)**, by and through the Office of The Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section, and files these its reply comments on the Further Notice of Proposed Rulemaking released February 26<sup>th</sup>, 2002 in FCC Order No. 02-43. These comments are timely filed pursuant to the Commission's subsequent order in DA-02-783.

The Public Agency Representation Section of the Office of the Attorney General submits these reply comments as the representative of state agencies and state universities as consumers of telecommunications services in the State of Texas.

**NRTA and OPASTCO**

The State agrees with the comments of these organizations that a connection-based mechanism must take into account the connections of interexchange carriers, otherwise they will essentially be effectively exempted from making contributions. We also agree that all lifeline customers should be exempted, not just ILEC lifeline customers. The same reasoning applies to our proposal to exempt state governments. Sound public policy dictates that this is simply an additional burden on taxpayers and such a pass-through should be prohibited.

**Beacon Telecommunications Advisors**

The State also agrees with the comments of Beacon that the proposed assessment

methodology for multiline businesses is discriminatory and should not be enacted. It is particularly harmful to the State with respect to assessments, due to its lack of predictability and the fact that it discriminates on the basis of capacity available, rather than capacity used. This becomes a clear disincentive to investment in new, higher capacity technologies if customers will then potentially be subjected to a higher federal fee pass through by their carrier.

#### California Public Utility Commission

We agree with the comment of the California PUC that the carriers should not be allowed to mark-up their FUSF assessments should they choose to pass them through to their customers. These mark-ups, which can in some cases be quite exorbitant, are a primary defective feature of the current assessment system, making it impossible for customers subject to the pass-through to determine with reasonable certainty the amount of FUSF that will be billed to them for budgeting purposes.

#### National Telecommunications Cooperative Association

The State agrees with the NTCA that any FUSF safe harbor for wireless carriers, cable providers, satellite carriers, etc. is inequitable. The pool of contributors should be as broad as possible. This will be equitable and also put equivalent competitive pressure on all types of carriers to minimize or eliminate the amount of FUSF they may choose to pass on to their customers.

#### Coalition for Sustainable Universal Service

The State strongly opposes the suggestion of the Coalition, and its members commenting individually, that a “collect and remit” scheme is appropriate. What the Coalition’s proposal fails to take into account is that FUSF is an assessment on the carrier, not the customer and there is therefore no legal obligation on the customer to make payments to the fund. It follows logically that

the failure of a customer to pay a carrier the fee should have, and in fact does have, no legal effect on the carriers' obligation to make it's own contributions. As has been stated by the Commission repeatedly, the choice is the carrier's as to whether to pass this fee through to its customers. The proposal by the Coalition attempts to contradict in practice what has absolutely not been the Commission's fundamental position. That is, it makes the customer obligated to pay this fee, no matter what. This should not be the accepted practice of carriers in a competitive telecommunications marketplace, in which many carriers have already made a decision not to pass the fee on to their customers. Further, the proposal effectively requires carriers to pass through the charge to their customers, even if they have chosen not to do so.

#### Verizon

The State agrees with Verizon that a mechanism must be found to require all providers of broadband services to contribute to the FUSF. This would more equitably distribute the burden among different types of carriers to provide financial viability to the fund. The State also agrees with Verizon that treating multi-line connections differently than single-line is inherently inequitable and discriminatory. It does not promote the use of efficient technology and, as mentioned in our initial comments, using the multi-line customers to make up FUSF deficiencies will create wide fluctuations in the assessments, a particular problem for state governments trying to budget their services.

#### Nextel Communications

The State wholeheartedly concurs with the comments of Nextel that the federal excise tax model is the appropriate model for collection of this fee, but would continue to suggest imposition of the fee on carriers rather than customers. The fee simply should not be assessed on governmental

units as a matter of public policy, just as it is not assessed on lifeline customers for the same sound public policy reasons. Taxpayers should not be put in the position of being doubly taxed by making FUSF contributions for their own services as well as for all the units of government which they support.

The State of Texas appreciates this opportunity to provide reply comments on this further notice of proposed rule making.

Respectfully submitted,

JOHN CORNYN  
Attorney General of Texas

HOWARD G. BALDWIN, JR.  
First Assistant Attorney General

JEFFREY S. BOYD  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection Division

MARION TAYLOR DREW  
Public Agency Representation Section Chief

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ROGER B. BORGELT  
Assistant Attorney General  
State Bar No. 02667960  
Consumer Protection Division  
Public Agency Representation Section  
P.O. Box 12548  
Austin, Texas 78711-2548  
Voice: (512) 475-4170  
Fax: (512) 322-9114  
E-Mail: roger.borgelt@oag.state.tx.us

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